Office-Supreme Court, U.S.
FILED
MAY 21 1965
JOHN F. DAVIS, CLERK

No. 952

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

JOHN P. SPOMAR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition for Rehearing

WILLIAM A. BARNETT
135 South LaSalle Street
Chicago, Illinois 60603
Attorney for Petitioner

CHARLES R. PURCELL, JR.
41 East Pearson Street,
Chicago, Illinois

CROWLEY, BARNETT & GOSCHI
135 South LaSalle Street
Chicago, Illinois
Of Counsel

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAkeview 5-6581

INDEX

PAGE

Reason for Granting Rehearing and Issuing the Writ .. 2

The decision of the court below interprets and applies *Escobedo* v. *Illinois*, 378 U.S. 478, in a manner conflicting with the interpretations by courts of last resort in certain of the States 2

Conclusion 5

Certificate of Counsel 5

AUTHORITIES CITED

Escobedo v. Illinois, 378 U.S. 478 2

Massiah v. United States, 377 U.S. 201 2

People v. Dorado, 42 Cal. Rptr. 169 ..... 2, 4

People v. Dorado, 394 P.2d 952, 40 Cal. Rptr. 264 4

State v. Dufour, 206 A.2d 82 4

State v. Neely, 398 P.2d 482 3

State v. Neely, 395 P.2d 557 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 952

JOHN P. SPOMAR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition for Rehearing

Petitioner, John P. Spomar, respectfully prays that this Court grant rehearing of its order of April 26, 1965, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Seventh Circuit in the above-entitled cause, as prayed in the petition filed herein on March 4, 1965.

REASON FOR GRANTING REHEARING AND ISSUING THE WRIT

The decision of the court below interprets and applies *Escobedo* v. *Illinois*, 378 U.S. 478, in a manner conflicting with the interpretations by courts of last resort in certain of the States.

After the petition for certiorari was filed in this cause, petitioner's attorneys became aware that the courts of last resort in at least three states, California, Oregon and Rhode Island, have rendered decisions holding that, under *Escobedo* v. *Illinois*, 378 U.S. 478, confessions obtained from suspects who had been singled out in the investigation of a crime were inadmissible because the officers had failed to warn the suspects of their right to remain silent or to have the advice of counsel. Inasmuch as the court below held that there is no such duty to give warning, it is clear that a sharp disagreement has arisen among the courts as to the scope and effect of the *Escobedo* decision. That decision involves rights of the most fundamental character, and the existing uncertainty respecting them has created an undesirable situation in the administration of criminal justice.

In *People* v. *Dorado*, 42 Cal. Rptr. 169 (Cal. Sup. Ct., in bank, 1965), defendant, an inmate of San Quentin, was convicted of murdering a fellow prisoner. The trial court found, and the Supreme Court did not disturb the finding, that defendant had voluntarily confessed the crime before any formal proceedings against him had been commenced. Nevertheless, the conviction was reversed on the authority of *Escobedo* and *Massiah* v. *United States*, 377 U.S. 201, because the interrogating officers had not advised defendant

of his right to remain silent or of his right to counsel. The Court said, at 42 Cal. Rptr. 178:

> "Although in the instant case defendant could have waived his right to the assistance of counsel, we can find no waiver here in the absence of evidence that he knew of his right. Thus Escobedo points out that an 'accused may, of course, intelligently and knowingly waive * * * his right to counsel either at a pre-trial stage or at the trial.' (378 U.S. at 490 n. 14, 84 S.Ct. at 1765) That defendant should be informed of such right in order to sustain an alleged waiver finds expression in *Griffith* v. *Rhay* (1960), 9 Cir., 282 F.2d 711: 'Since Griffith had a right to the assistance of counsel on the afternoon of the interrogation, his failure to request such assistance has significance only if it amounted to a waiver of that right. But a waiver is an intentional relinquishment or abandonment of a known right or privilege. A waiver cannot be effected unless it is intelligently and competently given.' (Id. at p. 717.)"

In *State* v. *Neely*, 398 P.2d 482 (Ore. Sup. Ct., *en banc*, 1965), defendant had confessed to the crime of statutory rape while under arrest. The signed confession recited that defendant knew he was not required to make any statement. Nonetheless, the Court held it inadmissible on the ground that defendant had not been advised of his right to counsel. The Court said at 398 P.2d 486:

> "The state upon oral argument contended that a distinction should be made between the necessity of informing an accused of his right to counsel at the judicial stage of a criminal proceeding and prior thereto."

After discussing and quoting from *Escobedo*, the Court further stated (398 P. 2d at 486-487):

> "Adoption of the distinction advanced by the state would lead to results contrary to the basic beliefs of the United States Supreme Court and of this

court. Under the state's contention a suspect like Escobedo who has been previously jailed and, therefore, has previously needed the assistance of counsel, has a constitutional right to counsel because he knows through experience to demand counsel; however, a suspect who has never had any prior experience with the criminal process and, therefore, does not know by experience the assistance that a lawyer can give and, therefore, does not demand such assistance, has no constitutional right to counsel. If the state's distinction were accepted, we would grant the assistance of counsel to those educated enough to demand it and deny it to those too ignorant to ask for it. The United States Constitution demands equal treatment during the criminal process for the inexperienced and the uneducated.

"* * * In the absence of such knowledge an accused can in no way be deemed to have intelligently waived his constitutional rights, and in the absence of such waiver a confession obtained by such interrogation is inadmissible."

It is significant that both the *Dorado* and *Neely* cases were decided by the highest court of the respective states, sitting *en banc*, and that in both cases earlier opinions were withdrawn. See *People* v. *Dorado*, 394 P.2d 952, 40 Cal. Rptr. 264; *State* v. *Neely*, 395 P.2d 557. Unquestionably, therefore, the final opinions of these courts reflect the product of unusually careful consideration of the issues presented.

In *State* v. *Dufour*, 206 A.2d 82, 85 (1965), the Supreme Court of Rhode Island relied upon the *Escobedo* case in holding that a confession of a defendant under an informal arrest was invalid where the officers failed to advise him of his right to remain silent or of his right to counsel. The case is particularly pertinent because the concurring opinion of Justice Joslin is a good statement of the view

that *Escobedo* is not authority beyond its own facts. Thus, in a single decision, there is illustrated the point we make here—that *Escobedo* requires explanation in order that State and Federal courts may intelligently and correctly implement the constitutional guarantees. Only this Court can furnish that explanation, and we respectfully submit that the Court should do so, for until the conflict of views is resolved, many defendants will be denied their rights or, on the other hand, some valid convictions will continue to be set aside.

The instant case is an appropriate vehicle for such clarification. It was proved that petitioner was ignorant of his rights, yet the courts below held that he had waived them while ignorant, and in the absence of even a rudimentary effort by his interrogators to give him advice.

CONCLUSION.

For the reasons set forth above and in the petition for certiorari, it is respectfully urged that a rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

WILLIAM A. BARNETT
Attorney for Petitioner

CHARLES R. PURCELL, JR.
CROWLEY, BARNETT & GOSCHI
Of Counsel.

MICRO CARD 22
TRADE MARK ®

CD497

MATTHEW BENDER & COMPANY

56-6-5

microcard